
(1979) 09 AP CK 0016

In the Andhra Pradesh High Court

Case No : Writ Petition No. 5488 of 1979

C.S. Ramachandra Rao

APPELLANT

Vs

Land Acquisition Officer, Visakhapatnam and Another

RESPONDENT

Date of Decision : 26-09-1979

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 18(1), 31, 31(2)

Citation : AIR 1980 AP 115 : (1980) 1 APLJ 28

Hon'ble Judges : Sitharama Reddy, J;Lakshmaiah, J

Bench : Division Bench

Advocate : G. Ramachandra Rao, for the Appellant; Government Pleader, for the Respondent

Judgement

Lakshmaiah, J.—The point that arise for consideration in this case is whether a person who has received the first instalment of amount of compensation awarded otherwise then under protest is entitled to make an application u/s 18 of the Land Acquisition Act 1894 to have the matter referred by the Collector for the determination of the Court.

2. The petitioner owns an extent of 4.37354sq. feet in T. S. No. 640 of Vizianagaram Municipality that was acquired under award No. 12/78 dated 20-5-1978 for provision of house sites to scheduled caste people. The possession was also handed over on 12-6-1978.

3. Notice under Sections 9(3) and 10 of the Land Acquisition Act 1894 (hereinafter referred to merely as "the Act") posting the enquiry u/s 11 of the Act to 5-3-1977 was issued on 4-2-1977. The award enquiry was conducted on 5-3-1977. During the enquiry u/s 11 of the Act the petitioner did not file any claim statement. An award bearing No. 12/78 was passed on 20-5-1978 awarding Rs. 1,40,829-10 ps. The market value was fixed at Rs. 5-20 per square yard. The amount awarded was ordered to be paid in three annual instalments as per the provisions of the Land Acquisition (A. P. Amendment) Act 1976. A notice of award u/s 12(2) of the Act was issued to the petitioner mentioning the amount

of compensation awarded with a notice appended to the same which reads as under:

"Note: The amount is ordered to be paid in three annual instalments as noted below:-

The first instalment will now be paid, The second and third annual instalments will be paid after an interval of one year from the date of payment of first instalment with Government rate of interest". The petitioner was required to appear either in person or by an authorised agent within 15 days after the issue of the notice and receive the amount specified above, failing which, it is stated in the notice, that the said sum of money would be kept in the revenue deposits and would bear no interest.

4. The petitioner received the first instalment of compensation without protest. That was also intimated by the authorities concerned to the Accountant General, Andhra Pradesh, Hyderabad in Code Form "A" : "A". The writ petitioner was given cash but not cheque. After having received the first instalment of compensation without protest on 12-6-1978 the petitioner sent an application dated 1-7-1978, which was received in the office on 3-7-1978, stating that he is not accepting the award. The petitioner was informed by the office letter Rc. N. 31/77 dated 5-7-1978 that he received the compensation on 12-6-1978 without protest and that the acceptance of the amount without protest was also intimated to the Accountant General, Andhra Pradesh, Hyderabad, and that he was barred from seeking a reference u/s 18 of the Land Acquisition Act for enhancement of the compensation.

5. It is under those circumstances the petitioner invoked the extraordinary jurisdiction of this Court under Art. 226 of the Constitution seeking the issuance of an appropriate writ for calling the records relating to Award N. 12/78 on the file of the Land Acquisition Officer and District Social Welfare Officer, Visakhapatnam, the respondent herein, and for directing him to refer the matter to the Civil Court for determination of the compensation.

6. Sri. G. Ramachandra Rao, the learned counsel appearing for the petitioner, contended that the petitioners, contended that the petitioner received without protest only the first instalment of compensation awarded but he filed the application u/s 18 of the Act within the time and in view of the fact that the entire amount of compensation awarded was not paid it cannot be said that the petitioner received the amount of compensation without protest and therefore the respondent erred in rejecting the application of the petitioner u/s 18 of the Act for making the reference to the Civil Court.

7. It is contended by the learned Government pleader on the other hand that the payment of the entirety of the compensation amount awarded has nothing to do with the petitioner's being entitled to file an application u/s 18 of the Act when he received the first instalment of compensation awarded without protest.

8. Section 11 of the Act provides for an enquiry and making an award by the Collector. The award so made u/s 11 of the Act shall have to be filed under sub-section (1) of Section 12 of the Act in the Collector's Office and it was rendered statutorily final and conclusive evidence as between the Collector and the persons interested, though it be subject to what was contained in the provisions of the Act. Under sub-sec. (2) of the aforesaid Section 12 of the Act the Collector shall give immediate notice of his award to such of the persons interested as are not present personally or by their representatives when the award is made.

9. Section 31 of the Act provides for the payment of the compensation or deposit of the same in Court, the material part of which reads thus :

"On making an award under Sec. 11, the Collector shall tender payment of the compensation awarded by him to the persons interested entitled thereto according to the award, and shall pay to them unless prevented by someone or more of the contingencies mentioned in the next sub-section".

This sub-section (1) of Section 31 of the Act was amended by the Land Acquisition A. P. Amendment Act 1976 (referred to hereinafter merely as the Amendment Act) by which in Section 31 after the words "and shall pay it to them", the words "in a lump sum in a case where it does not exceed Rs. 500/- and in all other cases in such number of equal annual instalments not exceeding five as may be determined by the Collector."

10. The second proviso to sub-sec, (2) of Section 31 of the Act is relevant for our purpose and it reads as follows:-

"Provided also that no person who has received the amount otherwise than under protest shall be entitled to make any application u/s 18".

As per sub-section (2) of Section 31 of the Act if the persons interested do not consent to receive the compensation amount tendered the Collector shall have to deposit the amount of the compensation in the court to which a reference u/s 18 of the Act would be submitted. We shall now read Section 18 of the Act in so far as it is material for our purpose.

"18. (1) Any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court, whether his objection to be the measurement of the land, the amount of the compensation, the persons to whom it is payable or the apportionment of the compensation among the persons interested.

(2) The application shall state the grounds on which objection to the award is taken. Clauses (a) and (b) prescribe the time within which the application u/s 18 shall have to be made."

11. What is therefore manifest from a reading of the foregoing provisions is that any person interested is entitled to make an application u/s 18 of the Act to have the matter referred by the Collector for the determination of the Court. But the

condition precedent for the applicability of sub-section (1) of Section 18 of the Act is that such a person interested must not have accepted the award. In the present case it is admitted that the application under S. 18 of the Act was filed well within time. But the question is whether it was filed by a person who has not accepted the award. He who has accepted the award is disentitled from asking for a reference u/s 18 of the Act. The question is whether the petitioner has or has not accepted the award within the meaning of the expression occurring in sub-section (1) of Section 18 of the Act.

12. Statutorily an occasion for the person interested to signify the factum of his not accepting the award was provided u/s 31 of the Act by requiring such a person at the time of receiving the payment tendered to receive the same under protest. The first instalment of the compensation was tendered to the petitioner and the petitioner in terms of the second proviso appended to sub-section (2) of Section 31, received the amount without any protest, and as per that proviso he is not entitled to make any application u/s 18 of the Act.

13. But Sri. G. Ramachandra Rao, the learned counsel appearing for the petitioner, contended that the point of time at which the protest shall have to be registered by the interested person is not when such a person receives the first instalment but at the time when he is to receive the entire amount of compensation awarded. Section 31(1) provides that on making an award under Sec. 11 of the Act the Collector shall have to tender payment of the compensation awarded to him to the persons entitled thereto according to the award. If the persons entitled do not consent to receive it the Collector is obliged under sub-section (2) of the aforesaid Sec. 31 to deposit the amount of compensation in the Court to which a reference u/s 18 of the Act would be submitted. Under the second proviso appended to the aforesaid sub-section (2) no person who has received the amount otherwise than under protest shall be entitled to make any application under Sec. 18 of the Act. The occasion to receive the amount arises only when it was tendered.

The protest as required to be registered or made under the aforesaid proviso should necessarily be with respect to the receipt of the amount and the receipt of the amount is referable only to the amount that is tendered. The amount that was tendered here is the first instalment of the compensation award. There is therefore nothing in the language employed in Section 31 of the Act warranting the conclusion that the learned counsel requests this court to draw, from a reading of Section 31 to the effect that the person interested is entitled to protest or at any rate he can exercise that right of protest till the last pie is paid. We have, therefore, no hesitation in rejecting the contention of the learned counsel for the petitioner that the person entitled can protest at any time even after receiving the first instalment of payment without a protest so as to entitle him to file an application u/s 18 of the Act. The first respondent stated in his order thus:

"With reference to your letter cited requesting for reference under Sec. 18 of the

Land Acquisition Act in the matter of acquisition, of T. S. N. 640 of Vizianagaram Municipality, I would like to inform you that you received the compensation on 12-6-1978 in my office without protest. While receiving the payment of compensation in Code Form CC. you have not recorded that you have accepted the compensation under protest. The fact of your accepting the compensation without protest has already been communicated to the Accountant General, Andhra Pradesh, Hyderabad in Code Form A. A. on 17-6-1978. Having received the compensation without protest, you are barred from seeking reference u/s 18 of the Land Acquisition Act for enhancement".

We are of the opinion that the District Social Welfare Officer is quite correct in rejecting the application filed by the petitioner u/s 18 of the Act and agree with the reasons assigned by the respondent while so rejecting the application of the petitioners.

14. A contention was sought to be raised to the effect that because the application was filed well within time, u/s 18 of the Act the person interested must be taken to have not accepted the award and as such he is entitled to claim a reference u/s 18 of the Act. The time within which an application is required to be filed pertains to the realm of adjectival law where receiving amount without protest pertains to the content of the right conferred statutorily upon the petitioner and therefore unless the statutory condition viz., the person claiming reference u/s 18 of the Act should be one who has not accepted the award was complied with no reference can be had and whether or not such a requirement was complied with can be spelled out from the receipt of the amount by the interested person with or without protest.

15. For the aforesaid reasons we are satisfied that the respondent is quite correct in rejecting the application filed by the petitioner u/s 18 of the Act after receiving the first instalment of compensation without protest. The writ petition is therefore dismissed without costs. Advocate's fee Rs. 150/-.

16. Petition dismissed.